

B.B., Appellant

**U.S. POSTAL SERVICE, POST OFFICE,
Los Angeles, CA, Employer**

Issued: June 28, 2017

Office of Solicitor, for the Director

Case Submitted on the Record

Before:

COLLEEN DUFFY KIKO, Judge

ALEC J. KOROMILAS, Alternate Judge

On March 20, 2017 appellant filed a timely appeal from a February 10, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issue is whether appellant met her burden of proof to establish a right shoulder condition causally related to factors of her federal employment.

On November 1, 2016 appellant, then a 32-year-old city letter carrier, filed an occupational disease claim (Form CA-2) alleging severe pain in her right shoulder and right

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the issuance of OWCP's February 10, 2017 decision, and on appeal, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. Thus, the Board may not consider the new evidence. *See* 20 C.F.R. § 501.2(c)(1).

lower leg caused or aggravated by casing and carrying mail. She became aware of the condition on December 9, 2013 and realized its relationship to her federal employment in January 2015. Appellant stopped work on October 19, 2016. She indicated that she had previously filed a claim under OWCP File No. xxxxxx755 regarding a December 9, 2013 work-related motor vehicle accident. Appellant related that she stopped work following this accident and returned to work with restrictions in July 2014. She claimed, however, that her right shoulder pain was still present and it worsened as she continued to work casing and carrying mail.

By letter dated December 20, 2016, OWCP informed appellant of the deficiencies of her claim and requested that she submit medical evidence and respond to its inquiries.³ It also requested that the employing establishment submit treatment notes if appellant was treated at an employing establishment medical facility.

In a December 29, 2016 letter, appellant noted that she filed the current claim because she believed that her right shoulder condition had worsened due to her work duties, which included casing mail six to eight and one-half hours a day. She related that she repetitively used her arm while casing four to six routes a day within eight hours. Appellant maintained that she cased about five feet of letters and five feet of flat mail on each route. In performance of these duties, she reached out from her waist to above her head for about one and one-half to two and one-half hours on each case. Appellant noted that she loaded mail into a postal vehicle and took it out to carriers who delivered it. She performed the described activities eight and one-half hours a day. Appellant claimed that her right shoulder started to pop more often and she experienced more pain. She indicated that she was not engaged in any employment or business outside of her postal employment and that she did not play any sport or have a hobby.

In reports dated January 17 and 26, 2017, Dr. Jimmy S. Padilla, an attending physiatrist, noted an injury date of December 9, 2013 and appellant's return to work in July 2014. He also noted her social and medical history and provided examination findings. Dr. Padilla diagnosed right bicipital tendinitis and right rotator cuff syndrome. He listed appellant's restrictions and placed her on modified activity at work and home from January 17 through February 9, 2017. Dr. Padilla noted that according to OWCP appellant's right shoulder claim appeared to be a new claim that resulted from casing mail.

In a February 10, 2017 decision, OWCP denied appellant's occupational disease claim. It found that the medical evidence of record was insufficient to establish a right shoulder condition causally related to the accepted employment factors.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the

³ In its December 20, 2016 development letter, OWCP noted that appellant's traumatic injury claim under File No. xxxxxx755 had been accepted for a right shoulder condition. File No. xxxxxx755 is not before the Board on the present appeal.

employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish a causal relationship is rationalized medical opinion evidence. The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the employee.⁶

ANALYSIS

OWCP accepted that appellant performed the work duties of a city letter carrier, which involved, among other duties, casing and carrying mail. The Board finds, however, that the medical evidence of record is insufficient to establish that she sustained a right shoulder condition caused or aggravated by the accepted work factors.

The sole medical evidence consists of Dr. Padilla's reports. In his reports, Dr. Padilla found that appellant had right bicipital tendinitis and right rotator cuff syndrome. He noted an injury date of December 9, 2013, the date of appellant's previously accepted claim for a right shoulder injury under File No. xxxxxx755. While Dr. Padilla indicated that according to OWCP the present claim appeared to be a new claim for a right shoulder injury due to casing mail, he did not specifically provide his own medical opinion as to whether the established employment factors in this claim caused or aggravated appellant's right shoulder conditions. The Board has held that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value.⁷ The Board finds that the evidence from Dr. Padilla is insufficient to establish appellant's claim.

Appellant's belief that factors of employment caused or aggravated her condition is insufficient, by itself, to establish causal relationship.⁸ The issue of causal relationship is a medical one and must be resolved by probative medical opinion from a physician. The Board finds that there is insufficient medical evidence of record to establish that appellant's right

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁵ S.P., 59 ECAB 184 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ I.J., 59 ECAB 408 (2008); *Victor J. Woodhams*, *id.*

⁷ C.B., Docket No. 09-2027 (issued May 12, 2010); *J.F.*, Docket No. 09-1061 (issued November 17, 2009); *A.D.*, 58 ECAB 149 (2006).

⁸ 20 C.F.R. § 10.115(e); *Phillip L. Barnes*, 55 ECAB 426, 440 (2004).

shoulder condition was caused or aggravated by the accepted employment factors. Appellant, therefore, did not meet her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has failed to meet her burden of proof to establish a right shoulder condition causally related to factors of her federal employment.

ORDER

IT IS HEREBY ORDERED THAT the February 10, 2017 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 28, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board